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May 14, 2008

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte Notification: WC Docket No. 07-97, Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*

Dear Ms. Dortch:

Yesterday, Lisa Youngers of XO Communications, LLC, Angela Simpson of Covad Communications Group, and the undersigned and Brad Mutschelknaus, of Kelley Drye & Warren LLP, met with Tim Stelzig, Denise Coca, Adam Kirschenbaum, Pamela Megna, and Deena Shetler of the Policy Division of the Wireline Competition Bureau. At that meeting, we reviewed the data submitted by Qwest to justify forbearance from Section 251(c)(3) unbundling requirements and the data filed by Covad Communications Group, NuVox Communications, and XO Communications, LLC refuting Qwest's claims regarding competitive market penetration.

At the meeting, staff requested clarification regarding the definition of "Addressable Demand" as used in Table 4 of the ex parte letter filed April 24, 2008 in the above-captioned proceeding.¹ The data used to produce Table 4 was obtained from GeoResults. GeoResults Addressable Demand data was calculated in the following manner. The businesses in commercial buildings in each wire center were identified by GeoResults from its National Business Database. The GeoResults National Business Database was sourced from the Experian

¹ Letter from Brad Mutschelknaus, Counsel to Covad Communications Group, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Apr. 24, 2008).

Marlene H. Dortch, Secretary

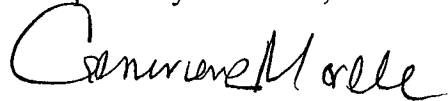
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National Business Database.² GeoResults' National Business Telecom database was then used to estimate the telecommunications demand (by DSO) for businesses in the commercial buildings in each wire center. From this information, GeoResults then calculated the estimated demand in each commercial building and the aggregate demand in each wire center. The Addressable Demand Market Share in a particular wire center represents the percentage of total telecommunications demand in the wire center that exists in those commercial buildings in the wire center served by at least one facilities-based competitive carrier.

The attached presentation was used at our meeting.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Genevieve Morelli".

Genevieve Morelli

Attachment

² Experian is one of the primary suppliers of National Business Databases in the U.S.

Wireline Competition Bureau
Presentation
WC Docket No. 07-97

Covad Communications Group
NuVox Communications
XO Communications, LLC

May 13, 2008

Section 251(c) Forbearance Framework

■ Step 1

- Qwest must show “successful” competition in the aggregate in each MSA
 - Competition must be evaluated separately for each relevant product market
 - Competition must be facilities-based
 - QPP, resale, UNE, special access, and over-the-top VoIP lines do not qualify
-

Section 251(c) Forbearance Framework

■ Step 1 (cont'd)

- Must be more than one facilities-based competitor
 - The duopoly that would result if only one facilities-based competitor would be contrary to the public interest
- Facilities-based competitors must be providing substitutable services in the relevant product market

Section 251(c) Forbearance Framework

■ Step 2

- If the Step 1 analysis meets the established threshold, a more granular analysis must be conducted
 - For each product market, competitors' facilities-based coverage by wire center must be ascertained
 - Facilities must be able to be used to provide substitutable services in the relevant product market within a commercially reasonable period of time
-

Section 251(c) Forbearance Framework

- Step 3

- For each wire center that meets the coverage threshold (*i.e.*, 75%), the level of actual facilities-based competition in that wire center must be ascertained

- Step 4

- Section 10 criteria (*i.e.*, public interest) must be met
-

Qwest Has Not Established That Sufficient Competition Exists In Any Product Market

- Qwest has not produced product market specific data
 - Data for the enterprise market consists of a single survey estimating Qwest's "revenue share"
 - Data for the mass market addresses only a subset of the market (*i.e.*, residential customers)
-

The Residential Market Data Produced By Qwest Is Fundamentally Flawed

- Qwest includes non facilities-based lines (*i.e.*, QPP and resale) in its analysis
- Qwest admits its data are only estimates that cannot substitute for actual line count data

The Residential Market Data Produced By Qwest Is Fundamentally Flawed (Cont'd)

- Wireless lines should be excluded from the analysis
 - Wireless lines today are not a complete substitute for wireline services in any product market
 - Jan. 2008 NPRM – WC Docket Nos. 05-337 and 96-45
 - Mikkelsen paper confirms this fact
 - If wireless lines are included, inclusion must be limited to the residential voice market
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The Residential Market Data Produced By Qwest Is Fundamentally Flawed (Cont'd)

- Wireless data used by the Commission must be from a neutral third party
 - CDC Survey is an appropriate source
 - Adjustments to the CDC Survey results suggested in Gillan Associates paper must be adopted
 - Use of the lower bound of the 95% confidence interval
 - Identifiable groups that are not representative of the population as a whole should be excluded
 - College-age respondents should be excluded
 - Telephia survey is not a reliable source
-

Actual Facilities-Based Penetration In The Enterprise Market Is, At Best, Very Modest

- An aggregate market share for the enterprise market must be ascertained
 - GeoResults is a neutral source for data on the extent of facilities-based competition in the enterprise market
 - GeoResults data for the 4 MSAs at issue has been obtained by the competitors
-

Actual Facilities-Based Penetration In The Enterprise Market Is, At Best, Very Modest

Table 1

MSA	Total Number of Commercial Buildings in MSA	% of Commercial Buildings Served by Facilities-Based CLECs
Denver	104,385	0.24%
Minneapolis/St. Paul	124,740	0.26%
Phoenix	127,763	0.17%
Seattle	127,880	0.18%

Actual Facilities-Based Penetration In The Enterprise Market Is, At Best, Very Modest

Table 2

MSA	Wire Center with Highest Percentage of Commercial Buildings Served by Facilities-Based CLECs	Total Number of Commercial Buildings in Wire Center	Percentage of Commercial Buildings Served by Facilities-Based CLECs
Denver	ENWDCOMA	2433	2.28%
Minneapolis/St. Paul	MPLSMNDT	1574	3.62%
Phoenix	PHNXAZSE	1095	1.46%
Seattle	STTLWAEL	666	3.15%

Actual Facilities-Based Penetration In The Enterprise Market Is, At Best, Very Modest

Table 3

MSA	Total Number of Wire Centers in MSA	Total Number of Wire Centers with No Buildings Served by Facilities-Based CLEC	Percentage of Wire Centers with No Buildings Served by Facilities-Based CLECs
Denver	47	20	43%
Minneapolis/St. Paul	140	84	60%
Phoenix	76	39	51%
Seattle	69	30	43%

Actual Facilities-Based Penetration In The Enterprise Market Is, At Best, Very Modest

Table 4

MSA	Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share between 0%-5%	Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share between 5%-10%	Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share between 10%-15%	Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share above 15%
Denver	41	3	3	0
Minneapolis/ St. Paul	133	6	1	0
Phoenix	72	4	0	0
Seattle	66	2	1	0

Actual Facilities-Based Penetration In The Enterprise Market Is, At Best, Very Modest

- Qwest “fiber network” data does not show facilities-based competition in the enterprise market
 - Qwest fails to identify:
 - The fiber providers
 - Whether (and to what extent) the fiber is being used to provide telecom services
 - Whether the networks can support the full range of services within a commercially reasonable time
 - Qwest fails to acknowledge that passing a location does not necessarily mean the owner can provide service at that location
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Qwest Has Failed To Prove That Successful Competition Exists In Any MSA

- Because Qwest has failed to show that successful competition exists at the aggregate (*i.e.*, MSA) level in any product market, its petitions must be denied
 - Network coverage data recently filed by Qwest is irrelevant
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